IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6458 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASIF ENTERPRISES

Versus

O.N.G.C. LIMITED

Appearance:

Mr. Y.N.Oza, Sr. Advocate for MR KRISHNA G PILLAI for Petitioner.

Mr. S.B.Vakil, Sr. Advocate with MR RAJNI H MEHTA for Respondents No. 1-5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:11/01/2002

CAV JUDGEMENT

This petition has been filed for quashing and setting aside the impugned order dated 23rd January,

2001 passed by the respondent no. 5 at Annexure "A" and for a direction to the respondent Corporation to accept the tenders submitted by the petitioner for contracts as mentioned in para-8 of the petition and to award the said contract to the petitioner in accordance with law as if impugned order dated 23rd January, 2000 was not passed and to issue new tender forms to the petitioner for future cotnracts and accept and process the said tenders for future contracts in accordance with law.

2. The petitioner is an approved contractor of the respondent Corporation since 1990 and various contracts have been completed by the petitioner and it was awarded on average about 40 contracts per year from 1992 to 1997 and they were completed to the satisfction of the Corporation. The dispute relates in respect of the contracts awarded in the year 1997 which are as follows:

(a) For laying of 8" dia effluent pipe from SND GGST to ETP Jhalora was awarded by agreement no. BDA/CMD/TL/CA/23/96 dated 29.11.1996.

(b) For laying of 8" dia effluent pipe from EPP to Sanand Plymer Plant was by agreement No. BDA/CMD/CA/24/97 dated 1.1.1997.

The petitioner submitted two bank guarantees bearing nos. 173-1 for Rs. 2,38,780/- and 169-1 for Rs. 3,41,743/-. As the contracts could not be completed within prescribed time limit, the bank guaratees were required to be renewed. At that time, it was found that those bank guarantees were fake and they were furnished by the petitioner due to some mistake of the employee of the petitioner. Hence, the petitioner submitted two fresh bank guarantees which were accepted by the respondent Corporation on the recommendation of the committee. After completion of the contract to the satisfaction of the Corporation, both the bank guarantees were returned to the petitioner. As furnishing of fake bank guarantees by an employee of the petitioner amounts to misconduct, that employee was terminated from service of the petitioner. Thereafter, the petitioner was also awarded the contract by an agreement dated 15/16.9.1997 for Rs. 28,92,689.18 ps. and dated 10/17.7.1998 for Rs. 58,56,450/-. The respondent Corporation also awarded to the petitioner 45 contracts for Ahmedabad project and 32 contracts for Mahesana project and those contracts were successfully completed by the petitioner to the satisfaction of the respondent Corporation. The letter dated 16th May, 2000 was issued to the petitioner. One Mr. G.L.Gupta was the General Manager of the Western Region business centre of the respondent Corporation and

Mr. G.L.Gupta had taken voluntary retirement and in his place Mr. Prakash Mehta came as General Manager (TPL) E & C. After taking of the charge, Mr. Prakash Mehta started harassing the petitioner and reopened old issue of the year 1997 pertaining to the bank guarantees bearing nos. 173/1 and 169/1. Mr. Prakash Mehta sent a letter on 16.5.2000 stating therein that the bank guarantees which were submitted by the petitioner were fake. On the basis of the intimation received from the State Bank of Saurashtra, Kalol branch, the respondent Corporation had already been informed by the bank regarding the said two bank guarantees in the year 1998 itself and therefore, there was no reason for the bank to inform the respondent Corporation again. The letter of the bank dated 5.4.2000 shows tht thebank had already intimted by telegrams and letters to the respondent Corporation. Thus, the respondent Corporation was aware of the said issue and that issue was already resolved and more than 80 contracts were awarded by the respondent Corporation to the petitioner and those contracts were completed by the petitioner to the satisfaction of the Corporation. Therefore, issuance of the said letter was totally out of consideration and unnecessary and only with view to harass the petitioner and with a malafide object and to extort money from the petitioner. Mr. Prakash Mehta asked the petitioner to give an amount of Rs. 7 lacs for obliging the petitioner with two contracts and not to initiate any proceedings or inquiry regarding the above mentioned two bank guarantees. As the petitioner had not committed any mistake or fault, it was the bonafide mistake on the part of the petitioner. The petitioner did not incline to give any illegal gratification to Mr. Mehta. Hence, he filed a complaint before CBI against Mr. Mehta and CBI had laid a trap and Mr. Prakash Mehta was caught red handed while he was accepting Rs.50,000/- towards part payment of Rs. 7 lacs. He was arrested and proceedings were initiated against him. The petitioner replied the letter dated 16.5.2000 of Mr. Prakash Mehta on 28th May, 2000. Thereafter, on 8.12.2000, a notice was issued by the respondent no. 3 asking the petitioner to show cause as to why the respondent Corporation should not ban future business dealings with the petitioner. That show cause notice was replied by the petitioner through its advocate on 14.12.2000. The petitioner again sent a letter dated 5th January, 2001 to the Deputy General Manager and Inquiry Officer requesting him to give an opportunity of personal hearing by way of personal meeting. But no such personal hearing or meeting was given to the petitioner and the impugned order was passed on 23.1.2001 by the respondent Corporation informing the petitioner that the

Corporation has decided to ban any fresh business dealing with the petitioner for a period of 10 years from the date of issue of the letter. The petitioner has filled up the tender forms for two contracts. The bid for the work at Sr. No.2 was opened on 27th January, 2000 and the price bid was to be opened on 24th April, 2000. The petitioner was directed by a letter dated 21st April, 2000 to remain present at the time of opening of the price bid. On 24th April, 2000 the price bid was opened and the respondent Corporation has given offer by a letter dated 29th April, 2000. The petitioner accepted the counter offer made by the Corporation and sent acceptance by a fax message dated 21st May, 2000. The petitioner has given a notice dated 4.7.2000 to the respondent Corporation requesting to issue a letter of intent to the petitioner but the respondent Corporation has not issued the letter of intent and nor has replied to the sid notice. The petitioner therefore, filed a writ petition being SCA No. 7899 of 2000 which was dismissed by this Court on 19th July, 2000 on the ground that no adverse decision has been taken against the petitioner and hence the writ petition was premture and liberty was granted to file a fresh petition, if any adverse decision is taken. Another tender was issued by the respondent Corporation. The petitioner also submitted its tender on 4.4.2001. The said tender was opened on the same day. The petitioner's tender was found 27% below the estimated rate of the respondent Corporation, but the work of the tender was not awarded to the petitioner. Another tender for construction of fighting system was submitted by the petitioner on 13th October, 2000 and that was also lowest 20% below the estimated rate of the respondent Corporation. Still however, the aforesaid contract was not awarded to the petitioner due to impugned order. One rate contract for the work of trunk feeder was submitted in April 2000, but the same has not been considered by the respondent Corporation because of the impugned order. The above said contracts are still not awarded to any person though the tender given by the petitioners is lowest, yet due to impugned order, the petitioner has not been awarded the above contracts. The petitioner filed Regular Civil Suit no.31 of 2001 in the Court of Civil Judge (S.D.), Gandhinagar. It also filed application exh. 5 for interim injunction. The learned Civil Judge (S.D.), Gandhinagar granted ad-interim injunction which was made absolute by an order dated 8th March, 2001. Being aggrieved by the order of 8th March 2001 of the Civil Judge (S.D.), Gandhinagar, the respondent Corporation filed Appeal from Order no. 30 of 2001 in the Court of the Assistant Judge, Ahmedabad (Rural) at Gandhinagar.

The learned Assistant Judge, Gandhinagar allowed Appeal from Order no. 30 of 2001 by his order dated 31st July, 2001 and set aside the order dated 8th March, 2001 on the ground of jurisdiction only. According to the petitioner, the learned Assistant Judge, has, without going into the merits and details, allowed the appeal filed by the respondent Corporation on the ground that the cause of action has arisen within the jurisdiction of the Gandhinagar Court. Being aggrieved by the impugned order passed by the respondent Corporation, the petitioner has therefore, filed the present petition inter alia on the ground that the impugned action of the respondent Corporation in black-listing the petitioner firm is prima facie bad, illegal and against well settled principles of law and fair-play. A show cause notice was issued on 8.12.2000 and that was replied by the petitioner on 14.12.2000. By another letter dated 5.1.2001, the petitioner requested the Deputy General Manager (MMT) Enquiry Officer to give an opportunity of personal hearing, but in absence of the opportunity of personal hearing in which the petitioner could be able to explain its case in detail, is against principles of natural justice, arbitrary, ultra vires, illegal and violative of Articles 14 and 19 of the Constitution of India. The incident took place in the year 1997 and the respondent Corporation had not taken action. The State Bank of Saurashtra had already informed the respondent Corporation in the year 1998. Fresh bank guarantees had already been furnished by the petitioner and the same were accepted by the respondent Corporation. The inquiry initiated by the Corporation and the impugned order suffers from the vice of delay, laches and acquiescence and also hit by the principle of estoppel. Once the respondent Corporation had accepted fresh bank gurantees, there was no reason for initiating the inquiry or taking any action against the petitioner after lapse of three years and hence the impugned order is not sustainable in the eye of law. Moreover, the impugned order is a non-speaking order and has been passed in mechanical exercise of power. The inquiry against the petitioner was initiated with malafide motive by the General Manager Mr. Prakash Mehta who had taken over the charge of the said post and the petitioner has made a specific allegation against Mr. Prakash Mehta. He demanded Rs. 7 lacs as illegal gratification and as the petitioner could not satisfy the demand, he specifically threatened to black-list the petitioner. At the instance of the petitioner, Mr. Mehta was caught red handed while accepting Rs. 50,000/- as part payment towards the amount of Rs. 7 lacs. Hence, proceedings were initiated against the petitioner at the instance of Mr. Prakash

Mehta. Thus, the action against the petitioner is with a malafide motive and deserves to be quashed and set aside. The impugned order is vindictive in nature just to take revenge against the petitioner. The inquiry has proceeded and the impugned order has been passed without following principles of natural justice and without considering the case of the petitioner in its proper perspective. The whole action on the ground of bank guarantees given by the petitioner is vague. That was due to mistake on the part of the employee of the petitioner and that was corrected by furnishing fresh bank guarantees. There was no intention on the part of the petitioner to commit any fraud or cheating the respondent Corporation. The punishment of black-listing is disproportionate to the allegations made against the petitioner. As the petitioner has worked for about 11 years to the satisfaction of the Corporation and that amounts to stigma on the career of the petitioner firm.

3. Affidavit-in-reply has been filed on behalf of the respondent Corporation wherein a preliminary objection has been raised that the plaintiff-petitioner filed application exh. 5 for interim injunction in the civil suit. The trial court granted ad-interim injunction against the respondents as prayed for vide its order dated 2.2.2001. The respondent Corporation therefore, preferred Appeal from Order no.30 of 2001 in the District Court, Ahmedabad (Rural) at Gandhinagar. That appeal has been allowed and the interim order dated 8.3.2001 of the trial court has been directed to be vacated. However, the respondents filed a caveat in Revision Application in this Court which the petitioner could have filed against the order dated 31st July, 2001 of the District Court. The petitioner has not filed any Revision Application till this date in this Court. When the petitioner failed to obtain interim relief in the pending suit, it has filed this petition which is an abuse of process of Court. The petition was filed on 7.8.2001 challenging the order dated 23rd January, 2001. As such, the petition is liable to be dismissed on the ground of undue delay and laches and this petition has been filed when the suit was already pending in the trial court. It is an uncontroverted fact and there is no attempt on the part of the petitioner to controvert that two bank guarantee nos. 173/1 for Rs. 2,38,780/- and 169/1 for Rs.3,41,743/- were forged and fake. It is asserted in the petition that some mistake was found by ONGC regarding the said bank guarantees and admitted to explain the forgery as mistake or lapse committed by the employee of the petitioner. In the judgment of the District Court, the act committed by the

respondent-petitioner was never considered to be legal and fair and the petitioner has nowhere denied that the above said two bank guarantees produced by it were not forged or fake. It was admitted that it happened due to mistake of some of its employees. The respondent did not produce forged and fake bank guarantees as alleged by the appellant. Describing the submission of forged or fake bank guarantees as mistake by an employee, is a sheer misrepresentation. Another bank guarantee was also filed which was a forged or fake bank guarantee. That fact has been suppressed. There was no question of giving any personal hearing to the petitioner. It was given a notice to explain and substanatiate genuineness and correctness of the bank guarantees dated 30th December, 1996 and 21st February, 1997. The show cause notice dated 8.12.2000 was given to the petitioner as to why business dealing with the petitioner should not be banned. The petitioner filed a reply dated 14.12.2000 through its advocate admitting that due to its employee, there was a mistake in furnishing the bank guarantees. In the reply, no personal hearing was sought for. Even in the letter dated 5.1.2001, the petitioner had not sought for personal hearing but stated that it would like to explain the facts which could be possible by personal discussion. Hence, there was no violation of principles of natural justice. It is also stated that when the bank guarantees were subsequently discovered forged and fake, were accepted by ONGC as the petitioner was not aware of their forged and fake nature. Soon after the bank which has not issued the bank guarantees confirmed that the bank guarantees were forged, action was taken against the petitioner. Furnishing of forged and fake bank guarantees even by mistake of employee which in reality is beyond anybody's imagination, cannot provide any excuse to the petitioner. The impugned order has not been passed by Mr. Prakash Mehta. The impugned order has been passed to protect the interest of ONGC and has nothing to do with what might have transpired between the petitioner and Mr. Prakash Mehta. The action was initiated on the ground that the bank guarantees which were given by the petitioner were fake. By the letter dated 16.5.2000, the petitioner was informed that State Bank of Saurashtra had intimated that the said bank guarantees were not issued by the said bank. The petitioner's explanation was sought about genuineness and correctness of the said bank guarantees. From the reply dated 28th May, 2000 it appears that the petitioner knew that its explanation was not sought merely with reference to the fakeness of any bank guarantee. Even in the show cause notice dated 8.12.2000, it was specifically pointed out that it was found that the bank guarantees were fake

and not issued by the State Bank of Saurashtra. The facts mentioned in the show cause notice as well as the contents of the petitioner's reply were considered and then the impugned order has been passed as mentioned therein. The impugned order is not arbitrarily passed as a result of non-application of mind or based on extraneous or irrelevant considerations made in disregard of any irrelevant considerations, biased or violative of Articles 14 and 19 of the Constitution of India.

4. A further affidavit in reply has also been filed by the respondents regarding the question of bias against the petitioner as argued on 24th August, 2001. The allegations of the petitioner that the impugned order was vindictive in nature or to take revenge against the petitioner complaining the ACB about the demand of illegal gratification by Mr. Prakash Mehta are denied. Mr. Prakash Mehta, General Manager on information from the State Bank of Saurashtra on 28th March, 2000 called for information on and passed some order on 13.4.2000 for inquiry in the matter and he found that on expiry of bank guarantees, a letter was written to the contractor on 2.6.1998 extending the validity of the bank guarantee dated 19.8.1999 to which the petitioner did not respond. Another letter was written to the contractor/petitioner on 3.7.1998 with a copy of the letter of the Branch Manager, State Bank of Saurashtra asking the contractor to extend the bank guarantee by 10.7.1998 and warning the contractor that otherwise ONGC will be compelled to ask the bank to encash the bank guarantee. In case of bank guarantee no.173-1, a letter was sent to the contractor on 10.7.1998 asking it to extend the validity of the bank guarantee dated 10.4.1997, otherwise, ONGC would be compelled to ask the bank to encash the above bank guarantee. In July and August, 1998, ONGC official came to know that these bank guarantees were fraudulent. A report was submitted on 26th April, 2000 recommending suitable action against the petitioner. Mr. Prakash Mehta submitted a proposal to write a letter to the petitioner according to the draft submitted and sought confirmation whether ONGC was justified in keeping the bid of the petitioner in abeyance in various tenders. The communication had already taken place prior to the arrest of Mr. Prakash Mehta on 11.8.2000. In fact, on 11.8.2000, Mr. Prakash Mehta had directed to process banning of case against the petitioner and his arrest was made lateron. The contentions taken by the petitioner in its advocate's letter dated 14.12.2000 were denied that the committee was formed as alleged to resolve the issue of bank guarantee. Mr. G.L.Gupta, General Manager has

retired and it was confirmed by Mr. K.C.Arora. Mr. G.C. Gupta, Deputy S[uperintending Engineer, now Superintending Engineer and Mr. Satishkumar, Executive Engineer (C and M) now Deputy Superintending Engineer.

5. Heard the learned Senior advocates for the parties and perused the relevant papers on record.

6. The contention of the learned Sr. Advocate Mr. Y.N.Oza for the petitioner is that the impugned order of black-listing the petitioner affects the civil rights of the petitioner and that order can only be passed after giving an opportunity of making a representation or explanation to show cause and opportunity of personal hearing is afforded. Otherwise, it will vitiate and will be in breach of principles of natural justice. He relied on the following case laws.

1. M/s. Erusian Equipment and Chemicals Ltd. vs. State of West Bengal and another reported in AIR 1975, SC, 266. The relevant portion reads as under:

> "14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.
>
> 15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion."
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> 20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into a lawful relationship with the Government for the purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

2. Joseph Vilangandan vs. The Executive Engineer (P.W.D.), Ernakulam and others reported in AIR 1978, SC 930. The relevant portion reads as under:

"18. This being the position, the rule in Erusian Equipment's case (ibid) (AIR 1975 SC 266) will be attracted with full force. While conceding that the State can enter into contract with any person it chooses and no person has a fundamental right to insist that the Government must enter into a contract with him, this Court observed (in the said case) (at page 269):

"black-listing has the effect of preventing a person from the privilege and advantrage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair-play require that the person concerned should be given an opportunity to represent his case before he is put on the black-list."

3. Raghunath Thakur vs. State of Bihar and others reported in AIR 1989, SC, 620. It is held as under:

"4. Undisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. In so far as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequences for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order in so far as it directs black-listing of the appellant in respect of future contracts, cannot

be sustained in law....."

4. M/s. Southern Painters vs. Fertilizers and Chemicals Travencore Ltd. and another reported in AIR 1994, SC, 1277 in which rule laid down in AIR 1989, SC 620 has been relied on. The relevant portion of the said judgment reads as under:

"8. Again in Raghunath Thakur vs. State of Bihar (1989) 1 SCC 229 at 230 :(AIR 1989 SC 620 para 4), this Court observed :

"Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequences should be passed only after following theprinciples of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representation against the order."

9. The deletion of the appellant's name from the list of approved contractors on the ground that there were some vigilance report against it, could only be done consistent with and after the compliance of the principles of natural justice. That not having been done, it requires to be held that withholding of the tender form from the appellant was not justified. It our opinion, the High Court was not justified in dismissing the writ petition."

5. Dandapani Roula vs. State of Orissa reported in AIR 1986 Orissa, 220.

"4. Law is well settled that nobody should be blacklisted without giving an opportunity of being heard. An order of blacklisting a person results in civil consequences. It affects the

reputation of the person blacklisted not only in his dealings with the Government but in his dealing with private firm. It affects his business prospects. These principles have been enunciated in the decisions reported in (1971) 1 Cut WR 147 (Puranchandra Das vs. Director of Public Instruction, Orissa) AIR 1975 SC, 266 (Erusian Equipment and Chemicals Ltd. vs. State of West Bengal) and AIR 19789 SC 930 (Joseph Vilangandan vs. Executive Engineer (PWD), Ernakulam.)"

7. On the other hand, learned Senior Counsel Mr. S.B.Vakil for the respondents contended that affording an opportunity of being heard before passing the order of punishment or an order adversely affecting a person is not an absolute rule of law. Observance of principles of natural justice depends on various factors i.e. when all the facts of misconduct are admitted by the accused/delinquent/defaultor the facts of charge are not disputed, then only one conclusion is possible and permissible. An opportunity of being heard to the petitioner concerned is not required to be given. Even some time an opportunity of representation/explanation to any show cause notice is not required to be given to the person concerned where some direction was given for doing a particular act and that direction has not been followed or complied with or if where an order in violation of principles of natural justice is set aside, it restores other illegal order. Reliance has been placed on the following judgments.

1. F.N.Roy s. Collector of Customs, Calcutta and others reported in AIR 1957, SC, 648.

M/s. Shrikrishnadas Tikara s. State of M.P. and others reported in AIR 1977, SC, 1691. The relevant portion reads as under:

"8. Nor are we impressed with the contention that natural justice has been breached. Here is a case where admittedly, the conditions of the contract had been broken and the obligations under the rules had been violated. The reply to the show cause notice has set out all that need be set out. The facts are simple. The explanation is non-exculpatory. The only plea is for condonation. The lessee having been heard, natural justice has been complied with. The fact that in the second notice by the Collector a

personal hearing was offered, does not mean that the failure prsonally to hear the petitioner was a contravention of the cannon of natural justice in the first case. It is well established that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. Has there been any unfair deal by the authority ? Has the party affected been hit below the belt ? Has he had a just opportunity to state his plea ? Having regard to the features of the present case, we are hardly satisfied that the order is bad on this score."

2. State Bank of Patiala s. Mahendra Kumar Singhal reported in 1994 Supplement (2) Supreme Court Cases, 463. The relevant paragraph reads as under:

"3. No rule has been brought to our attention which requires the appellate authority to grant a personal hearing. The rule of natural justice does not necessarily in all cases confer a right of audience at the appellate stage. That is what this Court observed in F.N.Roy vs. Collector of Customs, Calcutta. We, therefore, think that the impugned order is not valid. Our attention was, however, drawn to the decision in Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi wherein obseration is made in regard to the right of hearing. But that was not a caseof a departmental inquiry, it was one emanating from Article 324 of the Constitution. In our view, therefore, those observations are not pertinent to the facts of this case."

3. Cantonment Board and another vs. Mohanlal and another reported in (1996) 2 Supreme Court cases, 23 in which the Supreme Court has observed as under:

"2. The only question in this case is whether the view taken by the High Court is good in law. It is seen that the respondent in his reply had admitted that they constructed, as pointed out by the Cantonment Board in its notice dated 13.9.1974, and the previous notice. But he stated that he had done it bona fide and as he would not demolish it but requested the authority to reconsider the matter and withdraw the notice. In other words, he admitted that he had carried on illegal construction without compliance with

law. So the question is whether enquiry in that behalf is required to be conducted. We are of the considered view that the High Court was not right in its conclusion that an indepenmdent enquiry requires to be held after the notice was issued and the reply thereof was given by the respondent."

4. Shiv Sagar Tiwari vs. Union of India and others reported in (1997) 1 Supreme Court cases, 444. In the said ruling, the Supreme Court has observed as under:

"May it also be stated that it is well settled that requirements of natural justice can be moulted insuch a way as to take care of two basic facts of this principle : (1) to make known the nature of accusation; and (2) to give opportunity to state the case, as accepted by this Court in Hira Nath Mishra vs. Principal, Rajendra Medical College. In Subhas Chandra case it has been even held that no hearing is required to be given to the candidates before cancelling the examination where mass-copying was indulged, if a case for the same was otherwise made out. Present is also a case of large-scale out of turn allotments, and so, on principle no hearing at all might have been given. But we did not go to that extent and gave even personal hearing to many among those who chose to appear pursuant to the notice published in the newspaper, which alone was feasible. All the allottes liable to be adversely affected being in Delhi and being well educated, newspaper publication was definitely sufficient to enable them to know that they must have been informed. Indeed, the employees concerned were knowing much aliunde also.

49. Natural justice is after all "no unruly horse, no lurking land mine" as characteristically stated by Krishna Iyer, J in Chairman, Board of Mining Examination and Chief Inspector of Mines vs. Ramjee. Its unnatural expansion without reference to these realities can be "exasperating" as observed by the learned Judge. It is also worthwhile to remember, as stated in para 24 of S.L. Kapoor vs. Jagmohan that where on admitted or indisputable facts only one conclusion is possible, the Court may not compel the obserance of natural justice, as it would be futile to do so. The real point for determination for us has been whether the

incumbent got the allotment as per his turn or he jumped the queue, on the face of our rejection to depart from the existing policy requiring eviction of those also included in Categories I and X. This we got examined well and have felt satisfied at the work undertaken by the Committee in this regard."

5. Dharmarthmakara Raibahadue Arcot Ramaswamy Mudaliar Educational Institution vs. Educational Appellate Tribunal and another reported in (1999) 7 Supreme Court cases, 332. The Supreme Court has observed as under:

".....In view of this, it cannot be said on the facts and circumstances of this case that there was any violation of any principle of natural justice as sufficient opportunity was given to her. The said matrix of facts reel, on the contrary, which is also not in dispute that respondent no. 2 inspite of her earlier application for leave for seeking permission for doing Ph.D. course which is for three years being rejected, she inspite of this under the garb of leave for doing M.Phil course for one year and on such leave, without seeking any fresh permission from the appellant got herself registered for Ph.D. course. This apart, admittedly, she even violated the conditions of her leave for which she filed an affidavit i.e. if she does not get admission in M.Phil course by 31.7.1978, she would rejoin the service which she did not do. The facts speak for themselves. It is also clear from the record that the appellant gave opportunity to her. On these facts, the order of termination passed by the appellant cannot be said to be illegal. We find that both the Tribunal and the High Court did not revert (sic advert to) or scrutinise these basic facts which are so apparent and revealing that no other inference is possible and that is why we do not find on record even from her reply any sustainable defence taken by her.

8.The contention of the learned counsel for the respondent is confined that there was no enquiry in terms of section 6 of the said Act. There is no submission of any defence on merit. Even before us when we granted learned counsel an

opportunity to give any prima facie or plausible explanations on record to defend her actions, nothing could be placed before us. Giving of opportunity or an enquiry of course is a check and balance concept that no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where the statute requires. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations ? When she admitted she did not join M.Phil course, she did not report back to her duty which is against her condition of leave and contrary to her affidavit which is against her condition of leave and contrary to her affdiavit which is the charge, what enquiry was to be made ? In a case where the facts are almost admitted, the case reveals itself and is apparent on the face of the record, and inspite of opportunity no worthwhile explanation is forthcoming as in the present case, it would not be a fit case to interfere with the termination order."

6. K.L.Tripathi vs. State Bank of India and others reported in 1984(1) SCC,43. Relevant portion is reproduced as under:

"31. Wade in his Administrative Law, Fifth Edication at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformithy with the scheme of the Act and with the subject matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth.

32. The basic concept is fair play in action

administrative judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version of the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

34. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the version of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity of personal hearing. His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty. Indeed it may be mentioned that he was really

consulted at every stage of preliminary investigation upon which the charges were based and upon which proposed action against him has been taken. In that view of the matter, we are of the opinion that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because the evidence was not recorded in his presence or that the materials, the gist of which was communicated to him, were not gathered in his presence. As we have set out hereinbefore, indeed he had accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness or the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given explanation, namely he was overworked, he had consulted his superiors and sought their guidance, his conduct has not actually, according to him caused any financial risk or damage to the bank concerned. Therefore, in our opinion, in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation of the principles of natural justice. Had he, however denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore."

7. Aligarh Muslim University and others Vs. Mansoor Alikhan reported in (2000) 7 Supreme Court cases 529. The relevant portion of the judgment reads as under:

"23. Chinnappa Reddy, J in S.L. Kapoor case laid down two exceptions (at SCC p 395) namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case the

principle that breach of natural justice was in itself prejudice would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L.Tripathi Vs. State Bank of India Sabyasachi Mukharji, J (as he then was) also laid down the principle that not mere violation of natural justice be de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edication, pp 472-75) as follows: (SCC p 58, para 31).

"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent...There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principles of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala vs. S.K.Sharma. In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh vs. State of M.P."

8. M.C.Mehta vs. Union of India and others (1999) 6 SCC 237. The relevant portion is extracted as under:

"The above case is a clear authority for the proposition that it is not always necessary for the court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court can

under Articles 32 or 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against opposite party in violation of the principles of natural justice or is otherwise not in accordance with law."

8. I have considered the rival contentions raised by the learned counsel for the parties. Initially, the trend of decisions of the Supreme Court was that rule of natural justice was not required to be stictly followed. Thereafter, principles of natural justice by affording an opportunity of hearing to make a representation/explanation for a show cause notice was made mandatory. Lateron, personal hearing was also added, but the trend has been moulded by recent decisions of the Supreme Court that observance of principles of natural justice depends upon the facts and circumstances of each case in which various factors may require mandatory compliance of principles of natural justice not necessary. Even in some cases, show cause notice and inquiry is not required to be given for compliance of principles of natural justice. Moreover, for the availability of natural of principle justice if rule is breached is not necessary and where the facts are admitted and/or not in dispute and only one conclusion is possible.

9. Now, let us examine on the facts of the present case, whether the petitioner was entitled for personal hearing to follow the principles of natural justice and what prejudice was caused to it in absence of the opportunity of personal hearing being not given. It is not disputed that the respondent Corporation issued a show cause notice dated 8.12.2000 to the petitioner as to why ONGC should not ban future business dealings with the petitioner, requiring written reply with documents in support thereof within 15 days. It is also not disputed that the petitioner has sent the reply dated 14.12.2000 through its advocate to the respondent Corporation. It is also not in disputed that the petitioner sent a letter to the respondent Corporation requesting for personal meeting to present certain facts for personal discussion. The petitioner was not allowed personal meeting as requested by it.The respondent Corporation passed the impugned order dated 23.1.2001 banning fresh business dealing of the petitioner with respondent Corporation for a period of 10 years. It is also not disputed that an opportunity to represent its case/explain its conduct was

affrorded to the petitioner and in fact that opportunity of explaining its conduct has been availed by sending reply dated 14.12.2000 through its advocate. Now, the question which remains for consideration is as to whether not providing personal hearing by way of personal meeting would amount to violation of principle of natural justice and whether non-providing of personal hearing has caused any prejudice to it ? If it has not caused any prejudice to the petitioner, then it would not be entitled for personal hearing. Para-4 of the show cause notice dated 8.12.2000 describes as under :

> "4. Whereas on inquiry, it was found that Bank guarantees No. 169-I and 173-I referred above, were fake and not issued by State Bank of Saurashtra. These facts were communicated to you vide letter No. BDA/E&C/TPL/Conf/2000 dated 16.5.2000 (copy enclosed at Annexure -4)."

As per the reply dated 14.12.2000 to the show cause notice, the petitioner stated "Due to the employees, there was a mistake in the bank guarantee which was rectified by furnishing a new bank guarantee no. 82 for Rs.3,41,743/- and no.101/98 for Rs. 2,38,780/- in lieu of the old bank guarantee. " Thus, it is not in dispute that two fake bank guarantees were furnished by the petitioner. Can it be acceptable to this Court that an employee submitted two fake guarantees worth Rs. 5,80,000/- without collusion or permission of the employer ? What was the gain of the employee in furnishing two fake bank guarantees onbehalf of the employer ? The answer is in the negative. It appears from the allegations made in para-3 of the show cause notice dated 8.12.2000 that the petitioner had no account in the State Bank of Saurashtra and submitted the bank guarantee in Dena Bank, Kalol. The learned counsel for the petitioner has pointed out nothing as to what prejudice was caused to the petitioner in absence of personal hearing nor anything has been averred in the petition in that respect. During the course of arguments, the learned Sr. advocate Mr. Oza for the petitioner could not show as to what was the material or argument to be produced or advanced in the arguments in the personal hearing by the petitioner and what was the material to be discussed in the personal meeting. Mere raising a technical point that the petitioner was not given personal hearing and without showing any prejudice is not sufficient to hold that the act of the respondent Corporation in not providing an opportunity of personal hearing is in violation of principles of natural justice. Moreover, on the facts not disputed, only one conclusion

is that the petitioner deliberately got submitted two fake bank guarantees of total amount of Rs. 5,80,000/-. Thus, I find no substance in the contention of the learned counsel for the petitioner that the petitioner was not afforded fair and proper opportunity of being heard which violates the principles of natural justice.

10. The second contention of the learned Sr. Advocate Mr. Oza for the petitioner is that the entire action of the respondent Corporation for banning the business transations of the petitioner with ONGS is bias and malafide, as a result, the impugned order is not sustainable in the eye of law, inasmuch as Mr. Prakash Mehta took over the charge of General Manager on retirement of one Mr. G.L.Gupta. Though the two fake guarantees were filed due to mistake of some employee of the petitioner, the petitioner was permitted to replace them with fresh bank guarantees in the year 1998 and it was known to the officers of ONGC. The mistake of the petitioner was condoned by the respondent Corporation and about 80 contracts were given to the petitioner by the respondent Corporation, but Mr. Prakash Mehta inquired about issuance of fake bank guarantees from the bank vide letter dated 29th March, 2000 and the bank replied by its letter dated 5.4.2000 that the matter regarding bank guarantees, the bank has already informed by several letters and telegrams that two bank guarantees afforded were forged and fake. Mr. Prakash Mehta required the petitioner to explain and substantiate the genuineness and correctness of the aforesaid two bank guarantees within 15 days of the aforesaid two bank guarantees within 15 days by its letter dated 16.5.2000. The petitioner filed its reply on 28th November, 2000. Mr. Prakash Mehta demanded illegal gratification of Rs. 7 lacs for awarding the contracts to the petitioner and to hush up the matter regarding fake bank guarantees, otherwise the petitioner would be blacklisted. As the petitioner was not inclined to give illegal gratification and hence Mr. Prakash Mehta waited for illegal gratification till 11.8.2000. However, he was caught red handed in the trap by ACB while accpting Rs.50,000/- as part payment towards the amount of Rs. 7 lac. Thus, the whole action for banning the business of the petitioner was taken at the instance of Mr. Prakash Mehta who demanded the illegal gratification of Rs. 7 lacs and is malafide and bias.

As against this argument of Mr. Oza, learned Sr. Advocate Mr. Vakil for the respondent Corporation contended that the allegations of bias and malafide have to be pleaded and person concerned against

whom the allegations of bias and malafide are made must be impleaded so that real facts regarding bias and malafide could be brought to the notice of the Court. There must be real "likelihood of bias" or "reasonable suspicion of "bias". In the present case, there is no real " likelihood or bias or "reasonable suspicion of bias" at all. Mere bald allegations of bias or malafide are not sufficient. Moreover, the show cause notice was issued by another officer and it cannot be said that the action of the respondent Corporation against the petitioner was bias and malafide at the instance of Mr. Prakash Mehta as he was placed under suspension. The learned counsel for the respondent relied on the following decisions of the Supreme Court.

1. I.K.Mishra vs. Union of India and others reported in (1997) 6 Supreme Court Cases, 228. It is observed as under:

"8. Lastly, it was urged that the order compulsorily retiring the appelant was a malafide order as the same was passed at the instance of Shri Manazure Muastafa Siddiqui, Accountant General, M.P., who bore grudge against the appellant. This argument is being noted only to be rejected. It may be noticed that the record before us does not show that Shri Manazure Muastafa Siddiqui was party to the suit. In fact he was not impleaded by name in the suit. Further, the allegations against Shri Siddiqui were totally vague. No inference of malafide couldbe drawn from such allegations. In the absence of full facts and particulars in the plaint in respect of allegation of malafide the order of compulsorily retiring the appellant cannot be held to be a malafide order."

2. State of West Bengal and others vs. Shivanand Pathak and others reported in 1998(5) SCC, 513. It has been held as under:

"25. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does notleave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

26. Bias has many forms. It may be pecuniary

bias, personal bias, bias as to subject-matter in dispute, orpolicy bias etc. In the instant case, we are not concerned with any of these forms of bias. We have to deal, as we shall presently see, a new form of bias, namely, bias on account of judicial obstinacy.

33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias". de Smith in Judicial Review of Administratie Action, 1980 Edn.pp.262m 264, has explained that "reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities."

3. Utkal University vs. Dr. Nrusingha Charan Sarangi and others others reported in 1999(2) SCC, 193. The relevant portion is quoted below:

"9. The last contention of the first respondent which has been accepted by the High Court is that of bias on the part of one of the members of the Selection Committee. The so called bias, as set out in the original petition, is that one of the experts was a member of an organisation which brought out a magazine of the Selection Committee was on the Editorial Board. Both the University as well as the selected candidate have pointed out that this fact was known to the first respondent throughout. He did not, at any time, object to the composition of the Selection Committee. He objected only after the selection was over and he was not selected. This would amount to waiver of such objection on the part of the first respondent. Reliance is placed on a decision of this Court in G.Sarana (Dr.) Vs. Universityof Lucknow in which this Court found that despite the fact that the appellant knew all the relevant facts, he had voluntarily appeared before the Committee and taken a chance of having a faourable recommendation from it. Having done so, it was not open to him to turn round and

question the constitution of the Committee. A similar view has been taken by this Court in the case of U.D.Lama vs. State of Sikkim SCC at page 119."

11. I have carefully considered the contentions of the learned counsel for the parties. This is a case in which lower rank officers of the respondent Corporation on the information by the bank were knowing the fact of submission of fake and fraudulent bank guarantees. When higher officers of the respondent Corporation came to know about the fact, not only a report was submitted a report for proper action against the petitioner, but also against those officers who were knowing about fake and forged bank guarantees of the petitioner, inasmuch as further affidavit-in-reply has been filed by Mr. Sanjay Ramanlal Trivedi, Chief Engineer (Construction and Maintenance) wherein he has stated that he found three officers of oNGC in his report, responsible for not bringing the facts to the notice of ONGC. Hence, he submitted a report dated 26th April, 2000 recommending suitable action against the petitioner. Mr. Prakash Mehta in his submission dated 5.5.2000 met the Group General Manager and submitted his proposal to write a letter to the petitioner according draft submitted and sought confirmation whether ONGC was justified in keeping the bid of the petitioner in abeyance in various standards. By the letter dated 29th March, 2000, it was inquired from the bank itself about fake bank guarantees of the petitioner. The bank vide its letter dated 5.4.2000 confirmed that the aforesaid bank guarantees were fake and forged. Then Mr. Prakash Mehta required the petitioner by a letter dated 16.5.2000 to explain and substantiate the genuineness and correctness of the bank guarantee. The petitioner submitted its reply dated 28th May, 2000 stating therein that the petitioner was not aware of obtaining bank guarantees by the officer in charge. But in the meeting of the high ranking officers of ONGC, it was decided that fresh bank guarantees should be furnished by the petitioner. Accordingly, fresh bank guarantees were furnished by the petitioner and they were accepted by the respondent ONGC. Mr. Prakash Mehta had already directed to process the case against the petitioner on 11.8.2001 in the forenoon. The petitioner was required to give fresh bank guarantees becauses the execution of work for which fake and forged bank guarantees were submitted was not complete. Hence, it was necessary for ONGC to safeguard its financial interest in the event of any claim arising in favour of ONGC on account of the

defective performance of the contract by the petitioner. In absence of finding of any authority or court of law, it would be difficult to accept at this stage that Mr. Prakash Mehta was caught red handed while accepting illegal gratification of only Rs. 50,000/- as part payment towards demand of Rs. 7 lacs. It is also possible that the petitioner finding itself in hot water at the instance of Mr. Prakash Mehta made arrangement for trapping Mr. Prakash Mehta. It is also not unusual for a person to place currency notes in the hand or pocket of other person and/or in order to get other person trapped and arrested red handed. Traps are made only in order to get rid of any difficulty. The petitioner, in absence of any finding of the authority or court of law, is not an exception. In the present case, the fact is not denied that fake and forged bank guarantees were submitted by the petitioner firm. As soon as that fact came to the knowledge of high ranking officers of ONGC, the inquiry was initiaated. The petitioner was required to submit explnation and after receipt of the explanation, an order was passed for processing the case against the petitioner. After finding prima facie case against the petitioner, a show cause notice was issued by another officer and not by Prkash Mehta and after considering the allegations made in the show cause notice and the explanation in the reply, the competent authority has passed the impugned order which is not vitiated or illegal on this score and I do not find any susbtance in the contention of the learned counsel for the petitioner that the action against the petitioner is malafide and bias at the instance of Mr. Prakash Mehta, and more particularly when there is no allegation of malafide or bias against the officer who issued the show cause notice and the officer who has passed the impugned order.

12. The next contention of the learned counsel for the petitioner is that the respondent Corporation has condoned the alleged misconduct against the petitioner and has waived its right to reopen the chapter which has already been closed. The respondent ONGC having known about two fake bank guarantees of the petitioner permitted the petitioner to file fresh bank guarantees. The question of renewal of the aforesaid bank guarantees was considered and condoned by the ONGC in the meeting held in the first week of July, 1998, seven highest officers of ONGC, namely :

(1) G.L.Gupt,a G.M.(T.P.L.)
(2) S.K.Sinha, C.E. (C & M)
(3) K.C.Arora, S.E. (C & M)
(4) G.C.Gupta, Dy. S.E.(E & M) now S.E.

(5) B.Kalikar, Dy. S.E. (C & M) now S.E.
(6) Satish Kumar, E.E. (C & M) now S.E.
(7) Bharat Parikh, Branch Manager, State Bank of Surashtra, Kalol Branch.

13. The plea of the petitioner that it was a bonfide mistake and the petitioner was not involved in issuance of fake bank guarantees and they were permitted by the respondent Corporation to replace by fresh bank guarantees. Thus, the mistake of the petitioner was condoned. Thereafter the petitioner was awarded about 80 contracts by ONGC. Thus, ONGC waived right of taking action against the petitione and hence no action can be taken against the petitioner after a period of two years. I have examined this contention raised on behalf of the petitioner and in my view, it is not tenable at all in view of the fact that ONGC permitted the petitioner to file fresh bank guarantees for safegurding the financial interest of ONGC. The statement made in the reply dated 14.12.2000 in respect of the alleged meeting of seven high ranking officers in which the plea of the petitioner that it was a bonafide mistake of the employee of the petitioner and the petitioner was not at all involved in the misconduct was accepted and condoned has been denied by the Chief Engineer in the further affidavit-in-reply which has been filed in this Court. There is nothing on record to show that any such meeting of high ranking officers was held and the matter regarding fake guarantees was considered and any decision was taken. So far as awarding of further contracts is concerned, high ranking officers of ONGC did not know about the misconduct of the petitioner in the month of March and April, 2000 that the preliminary inquiry was not held, the matter against the petitioner was not processed, and hence the contract were awarded to the petitioner and therefore, no inference can be drawn against the respondent Corporation on the basis of the material on record that ONGC has ever condoned the misconduct or mischevious act of the petitioner and waived its right to reopen the chapter. Mere delay in taking action against the petitioner is no ground to relieve the petitioner from its liability. In some of the Supreme Court decisions, it has been held that if any contract, licence or service has been obtained by misrepresentation of facts or fraud and that was pre-requisite condition that contract, licence or service can be revoked or terminated at any time, at the instance of any person as held by the Supreme Court of India in the case of Union of India and others vs. Bhaskaran reported in 1995 (4) supplement, SCC 100 and in the case of Kumari Mathavi and others vs. Additional Commissioner, Tribal Development and others

reported in 1995 Supplement (3) SCC, 241. In the present case, filing of bank guarantees is a pre-requisite condition for contract and it is found that the bank guarantees filed by the petitioner were fake and forged and that would amount to misconduct and on the basis of the misconduct, proper action can be taken banning future business or transaction and that, in my view, cannot be said to be an improper action on the part of the respondent Corporation.

14. The next contention of the learned counsel for the petitioner is that the impugned order is not a speaking order as it gives out no ground or reason for arriving at a conclusion and passing the order, hence it is not sustainable in the eye of law and in this regard, he relied on the decision of the learned Single Judge of this Court in the case of Gujarat State Civil Supplies Corporation Ltd. vs. Regional Provident Fund Commissioner and others reported in 1999(1) GLH, 803 wherein it has been held as under:

> "Any authority making an order affecting civil right of any person adversely is not only under an obligation to afford a fair opportunity of hearing and adopt a fair procedure, but, is also under an obligation to make a speaking order, that is to say reason for his concluding must find place in the order. Order must speak for itself. All those are parts of principles of natural justice. In the case of determination of sum payable by an employer to provident fund is required to be determined after affording opportunity of hearing to concerned parties and that all the more necessitates the making of a speaking order."

15. I have considered this argument of the learned counsel for the petitioner. In law, there is no prescribed format of order giving out reasons or grounds for arriving at a conclusion nor can we expect from purely technical person like officers of ONGC to give out reasons for a conclusion. That could have been done only when before passing the impugned order, the officer could have consulted their advocate on panel for a proper form to pass order giving out reasons for the final action. However, it is mentioned in the impugned order that on facts mentioned in the show cause notice and contents of the reply, the decision has been taken to ban the business dealings with the petitioner for a period of 10 years. In the show cause notice, it is stated that the petitioner has submitted two fake bank guarantees and on

that ground, ONGC proposed as to why further business should not be banned requiring the reply within 15 days. The petitioner stated in the reply to the show cause notice that due to mistake of its employee, the bank guarantees were filed which have been rectified by replacing new fresh bank guarantees in lieu of old bank guarantees. Thus, undisputed facts have been considered by the authorities in passing the impugned order. The learned counsel for the petitioner could not point out anything which dislodges admitted/undisputed fact of filing fake and forged bank guarantees. As such, in the facts, the impugned order cannot be said to be a non-speaking order and even if it gives no reasons, I do not think any good reason that it vitiates the proceedings as it relates to filing of two fake and forged bank guarantees by the petitioner and that fact has not been disputed or denied by the petitioner. Hence, even if no ground is mentioned, the entire facts have been considered by this Court. Therefore, this contention of the learned counsel for the petitioner is also not at all sustainable in the eye of law.

16. The learned counsel for the respondents raised a preliminary objection that this petition is not entertainable due to successive litigations. The petitioner filed civil suit in the trial court and succeeded in obtaining ad-interim injunction which was set aside by the appellate court. Without availing a regular remedy of Civil Revision Application in this Court for which a caveat had also been filed by the respondents, the petitioner has filed this petition when the suit was pending. The suit has been withdrawn during pendency of the present petition. In this respect, he also relied on certain authorities. However, the learned counsel for the petitioner contended that where the petitioner has a constitutional right it can be decided in a writ petition without availing of alternative remedy and he also relied on certain authorities in this regard. I do not think it proper to decide this issue at this stage where the petition has no merit on other grounds which have already been discussed and decided above.

17. Thus, as a result of the above discussion, this petition deserves to be dismissed. Accordingly, this petition fails and is hereby dismissed. Rule is discharged with no order as to costs. Interim relief, if any stands vacated.

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